



# **LAWS OF MALAYSIA**

**Act A1701**

**COMPANIES (AMENDMENT) ACT 2024**

Date of Royal Assent	... ..	24 January 2024
Date of publication in the <i>Gazette</i>	... ..	2 February 2024

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**LAWS OF MALAYSIA**

**Act A1701**

**COMPANIES (AMENDMENT) ACT 2024**

An Act to amend the Companies Act 2016.

[ ]

**ENACTED** by the Parliament of Malaysia as follows:

**Short title and commencement**

**1.** (1) This Act may be cited as the Companies (Amendment) Act 2024.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette* and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

**Amendment of section 2**

**2.** The Companies Act 2016 [Act 777], which is referred to as the “principal Act” in this Act, is amended in section 2 by substituting for the definition of “beneficial owner” the following definition:

“beneficial owner” means—

- (a) in relation to shares, the ultimate owner of the shares and does not include a nominee of any description; and
- (b) in relation to a company, a person as provided for in section 60A;’.

**New Division 8A**

3. The principal Act is amended by inserting after section 60 the following division:

“Division 8A

*Beneficial Ownership*

**Beneficial owner of company**

**60A.** (1) A person is a beneficial owner of a company if he is a natural person who ultimately owns or controls over a company and includes a person who exercises ultimate effective control over a company.

(2) The Registrar may issue guidelines for the purpose of identifying a beneficial owner of a company.

**Register of beneficial owners of company**

**60B.** (1) Every company shall keep a register of beneficial owners of the company and record in the register—

- (a) the full name, addresses, nationality, identification and usual place of residence of a person who is a beneficial owner of the company;
- (b) the date the person becomes a beneficial owner of the company;
- (c) the date the person ceases to be a beneficial owner of the company; and
- (d) such other information as the Registrar may require.

(2) The register of beneficial owners of the company shall be kept at the registered office of the company or any other place in Malaysia as notified to the Registrar.

(3) The company shall lodge with the Registrar a notice on any change to the particulars in the register of beneficial owners of the company.

(4) Any notice required under subsection (3) shall be lodged within fourteen days from the date on which the change is recorded in the register of beneficial owners of the company.

(5) The company shall retain the information of a person who has been recorded in the register of beneficial owners of the company as a beneficial owner but subsequently ceases to be a beneficial owner of the company for seven years from the date the person ceases to be a beneficial owner.

(6) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

(7) The Registrar shall determine the form, manner and extent of the information to be kept under subsection (1) and lodged under subsection (3).

(8) The register of beneficial owners of a company shall be *prima facie* evidence of any matters inserted in the register under this Act.

(9) The Minister may, in relation to access to the register of beneficial owners of the company kept at the registered office of the company or beneficial ownership information lodged with the Registrar, prescribe—

- (a) any person or class of persons who may access the register of beneficial owners of the company or the beneficial ownership information;
- (b) the manner and terms and conditions for accessing the register of beneficial owners of the company or the beneficial ownership information; and
- (c) the fee for the supply of the beneficial ownership information.

(10) In this section, “identification” means, in the case of any person issued with an identity card issued under the National Registration Act 1959, the number of the identity card, and in the case of a person not issued with an identity card, particulars of passport or such other similar evidence of identification as is available.

**Power of company to require disclosure of beneficial owner of company**

**60c.** (1) A company shall, by notice in writing, require any member of the company within such reasonable time and manner as specified in the notice—

(a) to inform the company whether the member is a beneficial owner of the company or if the member is not a beneficial owner of the company, as far as it is possible to do so, to indicate the persons by name and by other particulars sufficient to enable those persons to be identified as beneficial owners of the company; and

(b) to provide such other information as specified under subsection 60B(1).

(2) Where a company knows or has reasonable grounds to believe that any person is a beneficial owner of the company, the company shall by notice in writing, require such person within such reasonable time and manner as specified in the notice—

(a) to state whether he is a beneficial owner of the company or if he is not a beneficial owner of the company, to state whether he knows or has reasonable grounds to believe that any other person is a beneficial owner of the company and to give such particulars of that person that are within his knowledge; and

(b) to provide such other information as required under subsection 60B(1).

(3) Where a company knows or has reasonable grounds to believe that any member or person knows the identity of a person who is a beneficial owner of the company, the company shall by notice in writing require the member or person within such reasonable time and manner as specified in the notice—

- (a) to state whether he knows, or has reasonable grounds to believe that any other person is a beneficial owner of the company and gives such particulars of that person that are within his knowledge; and
- (b) to provide such other information as required under subsection 60B(1).

(4) Whenever a company receives information from the person to whom the notice is given under subsection (1), (2) or (3), the company shall, within fourteen days from the date on which the information is received, record in the register of beneficial owners of the company—

- (a) the date on which the notice requiring such information was issued; and
- (b) the particulars of the information received from the person.

(5) If a company has reasonable grounds to believe that a change has occurred to the particulars of a beneficial owner of the company that are stated in the register of beneficial owners of the company, the company shall give notice to the beneficial owner of the company—

- (a) to confirm whether or not the change has occurred; and
- (b) if the change has occurred—
  - (i) to state the date of the change; and
  - (ii) to provide the particulars of the change.

(6) If a company has reasonable grounds to believe that any of the particulars of a beneficial owner of the company that are stated in the register of beneficial owners of the company might be incorrect, the company shall give notice to the beneficial owner of the company to confirm whether the particulars are correct, and if not, to provide the correct particulars.

(7) A company and every officer who contravene subsection (1), (2), (3), (4), (5) or (6) commit an offence.

(8) Any person who contravenes any notice under this section commits an offence unless the person proves that the information in question was already in the possession of the company or that the requirement to give the information was for any other reason that is frivolous or vexatious.

(9) Any person who in purported compliance with any notice under this section makes any statement which he knows to be false or recklessly makes any false statement commits an offence.

### **Duty of beneficial owner of company to provide information**

**60D.** (1) A person who has reason to believe that he is a beneficial owner of a company shall, as soon as practicable—

- (a) notify the company that he is a beneficial owner of the company; and
- (b) provide information as may be prescribed.

(2) A person who is a beneficial owner of a company shall notify the company of any changes in his particulars in the register of beneficial owners of the company.

(3) A person who has ceased to be a beneficial owner of a company shall notify the company, as soon as practicable, of the change by stating—

- (a) the date the cessation occurred; and
- (b) the particulars of the cessation.

(4) Any person who contravenes this section commits an offence.

**Exemption from this Division**

**60E.** The Minister may, by order published in the *Gazette*, exempt any class of companies from the application of this Division either unconditionally or subject to such terms as the Minister may impose, if such companies are subject to any requirements under any other written laws similar to this Division.”.

**Amendment of section 68**

4. Subsection 68(3) of the principal Act is amended—

(a) in paragraph (i), by deleting the word “and” at the end of the paragraph; and

(b) by inserting after paragraph (i) the following paragraphs:

“(ia) the beneficial ownership information of the company;

(ib) the address at which the register of beneficial owners of the company is kept as required under subsection 60B(2), if not kept at its registered office; and”.

**Amendment of section 152**

5. Subsection 152(2) of the principal Act is amended by substituting for the words “any excluded offer or excluded invitation” the words “any excluded offer, excluded invitation or excluded issue”.

**Amendment of section 258**

6. Section 258 of the principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) In relation to a private company, the Registrar may, as he considers fit, extend the period within which financial statements and reports are required to be circulated by a private company if the private company makes an application for an extension of the period of circulation before the expiry of the period referred to in paragraph (1)(a).”.

**Amendment of section 264**

7. Section 264 of the principal Act is amended by inserting after subsection (4) the following subsections:

“(4A) Notwithstanding paragraph (4)(b), no partner of the firm is disqualified by reason of his spouse being an officer of the company, if such reason does not compromise the independence of the auditor and the firm of auditors.

(4B) The Registrar may issue guidelines for the purpose of determining the independence of the auditor and the firm of auditors.”.

**Amendment of section 365**

8. Section 365 of the principal Act is amended by inserting after the definition of “company” the following definitions:

“ “related company” means a company which is a subsidiary company, holding company or an ultimate holding company, of a subject company;

“subject company” means a company that has made an application under subsection 368(1);”.

**Amendment of section 366**

9. Section 366 of the principal Act is amended—

(a) by substituting for subsection (1) the following subsection:

“(1) The Court may order a meeting in a summary way to be summoned in such manner as the Court directs on an application to the Court for the approval of a compromise or arrangement by—

(a) a company;

(b) a creditor or class of creditors of a company;

(c) a member or class of members of a company;

(d) a liquidator, if a company is being wound up;  
or

(e) a judicial manager, if a company is under judicial management.”; and

(b) by inserting after subsection (2) the following subsection:

“(2A) All meetings held pursuant to an order of the Court made under subsection (1) shall be chaired by a person who is—

(a) an insolvency practitioner appointed under subsection 367(3); or

(b) a person elected by the majority in value of the creditors or class of creditors or members or class of members, if no insolvency practitioner has been appointed under subsection 367(3).”.

**Substitution of section 367**

10. The principal Act is amended by substituting for section 367 the following section:

**“Power of Court to appoint insolvency practitioner**

**367.** (1) The Court may, on an application for the approval of a compromise or arrangement under section 366, appoint an insolvency practitioner to assess the viability of the proposed compromise or arrangement.

(2) The insolvency practitioner appointed under subsection (1) shall prepare a report on the viability of the proposed compromise or arrangement and shall table the report at the meeting of creditors or members held under section 366.

(3) Notwithstanding subsection (1), the Court shall appoint an insolvency practitioner for the company when—

- (a) the company makes an application under section 368B, 368D or 369C; or
- (b) a related company of the company makes an application under section 368A.

(4) The insolvency practitioner appointed under this section—

- (a) shall have the right of access to all the records of the company at all reasonable times; and
- (b) shall be entitled to require from any officer of the company any information and explanation as he may require for the purposes of his duty.

(5) Where an insolvency practitioner is appointed under subsection (3), the insolvency practitioner shall prepare and submit a report on the progress of the proposed compromise or arrangement to the Court in the manner as the Court may determine before the compromise or arrangement is approved pursuant to subsection 366(4).

(6) The insolvency practitioner appointed under this section shall be entitled to receive a remuneration—

- (a) as agreed between the company and the insolvency practitioner; or
- (b) where there is no agreement between the company and the insolvency practitioner, as fixed by the Court in an order made under subsection (1) or (3).

(7) In making an order under paragraph (6)(b), the Court may state the person by whom the remuneration of the insolvency practitioner shall be paid.”.

**Amendment of section 368**

**11.** Section 368 of the principal Act is amended—

(a) by substituting for subsection (1) the following subsection:

“(1) Where no order has been made or resolution has been passed for the winding up of a company and a compromise or arrangement has been proposed between the company and its creditors or any class of those creditors, the Court may, in addition to any of its powers, on an application in a summary way by the company or any member or creditor of the company, grant a restraining order for a period of not more than three months from the date on which the restraining order is granted.”;

(b) by inserting after subsection (1) the following subsection:

“(1A) Upon the filing of an application for a restraining order under subsection (1) and until the application is decided by the Court or until the lapse of two months from the date of filing of the application, whichever is earlier—

(a) no order may be made, and no resolution may be passed, for the winding up of the company;

(b) no receiver or receiver and manager may be appointed over any undertaking or property of the company;

(c) no proceedings may be commenced or continued against the company other than the proceedings under section 366, 368C, 368D, 369A or 370 except with the leave of the Court and subject to any terms as the Court may impose;

(d) no execution, distress or other legal process may be commenced, continued or levied against any property of the company except with the leave of the Court and subject to any terms as the Court may impose;

- (e) no steps may be taken to enforce any security over any property of the company, or to repossess any goods held by the company under any chattels leasing agreement, hire purchase agreement or retention of title agreement, except with the leave of the Court and subject to any terms as the Court may impose; and
  - (f) no right of re-entry or forfeiture under any lease in respect of any premises occupied by the company may be enforced except with the leave of the Court and subject to any terms as the Court may impose.”;
- (c) in subsection (2), by substituting for the words “The Court may grant a restraining order under subsection (1) to a company for a period of not more than three months and the Court may on the application of the company, extend this period for not more than nine months if” the words “Subject to any terms that the Court may impose, the Court may grant an extension of not more than nine months to the period of restraining order referred to in subsection (1) to a company if”; and
- (d) by inserting after subsection (3) the following subsections:
  - “(3A) A restraining order granted under subsection (1) and an extension of the period of restraining order granted under subsection (2) may include one or more of the following orders:
    - (a) no order may be made, and no resolution may be passed, for the winding up of the company;
    - (b) no receiver or receiver and manager may be appointed over any undertaking or property of the company;
    - (c) no proceedings may be commenced or continued against the company other than the proceedings under this section, section 366, 368C, 368D, 369A or 370 except with the leave of the Court and subject to any terms as the Court may impose;

- (d) no execution, distress or other legal process may be commenced, continued or levied against any property of the company except with the leave of the Court and subject to any terms as the Court may impose;
- (e) no steps may be taken to enforce any security over any property of the company, or to repossess any goods held by the company under any chattels leasing agreement, hire purchase agreement or retention of title agreement, except with the leave of the Court and subject to any terms as the Court may impose;
- (f) no right of re-entry or forfeiture under any lease in respect of any premises occupied by the company may be enforced except with the leave of the Court and subject to any terms as the Court may impose.

(3B) No restraining order under this section shall be granted to a company if an order had been granted to the company under subsection (1), section 368B, 368D or 369C, or its related company under section 368A, as the case may be, within the preceding period of twelve months.”.

**New sections 368A, 368B, 368C and 368D**

**12.** The principal Act is amended by inserting after section 368 the following sections:

**“Power of Court to restrain proceedings, etc., against related company**

**368A.** (1) Where the Court has granted a restraining order under subsection 368(1) or an extension of period of such order under subsection 368(2) in relation to a subject company, the Court may, on the application of a related company, grant a restraining order for a period of not more than the period of the order granted to the subject company.

(2) When a related company makes an application under subsection (1), the related company shall—

- (a) publish a notice of the application in the manner as may be determined by the Registrar; and
- (b) unless the Court directs otherwise, send the notice of the application to each creditor of the related company who may be affected by a restraining order granted under subsection (1).

(3) The Court may grant a restraining order to a related company if the Court is satisfied that—

- (a) no order has been made, and no resolution has been passed, for the winding up of the related company;
- (b) the restraining order granted to the subject company under subsection 368(1) or (2) is in force;
- (c) the related company plays a necessary and integral role in the compromise or arrangement of the subject company;
- (d) the compromise or arrangement referred to in paragraph (c) will be frustrated if one or more of the actions that may be restrained by the restraining order is taken against the related company; and
- (e) the creditors of the related company will not be unfairly prejudiced if a restraining order is granted.

(4) A restraining order granted under subsection (1) may include one or more of the following orders:

- (a) no order be made, and no resolution may be passed, for the winding up of the related company;
- (b) no receiver or receiver and manager may be appointed over any undertaking or property of the related company;

- (c) no proceedings may be commenced or continued against the related company other than the proceedings under this section, section 366, 368C, 368D, 369A or 370, except with the leave of the Court and subject to any terms as the Court may impose;
  - (d) no execution, distress or other legal process may be commenced, continued or levied against any property of the related company, except with the leave of the Court and subject to any terms as the Court may impose;
  - (e) no steps may be taken to enforce any security over any property of the related company, or to repossess any goods held by the related company under any chattels leasing agreement, hire purchase agreement or retention of title agreement, except with the leave of the Court and subject to any terms as the Court may impose;
  - (f) no right of re-entry or forfeiture under any lease in respect of any premises occupied by the related company may be enforced except with the leave of the Court and subject to such any terms as the Court may impose.
- (5) The Court may, on application by the related company, grant an order to extend the period of the order granted under subsection (1) for a period of not more than the period of restraining order granted to the subject company under section 368.
- (6) The related company, any creditor of the related company or any receiver and manager of the whole or substantially the whole, of the undertaking or property of the related company, may apply to the Court for an order discharging or varying a restraining order granted under subsection (1).
- (7) The related company shall, within seven days after the date of an order granted under subsection (1), (5) or (6), lodge an office copy of the order with the Registrar.

**Super priority for rescue financing for compromise or arrangement**

**368B.** (1) Where a company has made an application under subsection 366(1) or subsection 368(1), the Court may, on an application by the company under this section, grant one or more of the following orders:

- (a) an order that if the company is wound up, notwithstanding subsection 527(1), the debt arising from any rescue financing obtained by the company shall be paid immediately after the costs and expenses of the winding up of the company referred to in paragraph 527(1)(a) are paid;
- (b) an order to secure a debt arising from any rescue financing which otherwise would not have been able to be obtained by the company unless the debt is secured by—
  - (i) a security interest on property of the company that is not subject to any security interest; or
  - (ii) a subordinate security interest on property of the company that is subject to an existing security interest;
- (c) an order to secure a debt arising from any rescue financing to be obtained by the company by a security interest of the same priority as or a higher priority than an existing security interest on property of the company, if—
  - (i) the company would not have been able to obtain the rescue financing from any person unless the debt arising from the rescue financing is secured in the manner referred to in this paragraph; and
  - (ii) the interests of existing security interest holder are adequately protected.

(2) A company that makes an application under subsection (1) shall, unless the Court orders otherwise, send a notice of the application to each creditor of the company.

(3) The reversal or modification on appeal of an order under paragraph (1)(b) or (c) does not affect the validity of any debt so incurred, or any security interest that was granted pursuant to the order, or the priority of that security interest, if the debt arising from rescue financing intended to be secured by that security interest was provided in good faith, whether or not with knowledge of the appeal, unless the order was stayed pending the appeal before the rescue financing was provided.

(4) For the purposes of subparagraph (1)(c)(ii), the interests of an existing security interest holder is adequately protected if—

- (a) the Court orders the company to make one or more cash payments to the holder, the total amount of which is sufficient to compensate the holder for any decrease in the value of the holder's existing security interest that may result from the making of the order under paragraph (1)(c);
- (b) the Court orders the company to provide to the holder additional or replacement security of a value sufficient to compensate the holder for any decrease in the value of the holder's existing security interest that may result from the making of the order under paragraph (1)(c); or
- (c) the Court grants any relief, other than compensation, that will result in the realisation by the holder of the indubitable equivalent of the holder's existing security interest.

(5) Where a company that has two or more super priority debts is wound up, the super priority debts—

- (a) rank equally in priority among all of the super priority debts; and
- (b) are to be paid in full or, if the company has insufficient property to meet the debt, shall rank *pari passu* and shall be paid in equal proportion among all of the super priority debts.

(6) Sections 426 and 528 shall not affect any priority conferred, any security interest or relief granted, or any payment made, pursuant to and in accordance with an order granted under subsection (1).

(7) The company shall, within seven days after the date of an order granted under subsection (1), lodge an office copy of the order with the Registrar.

(8) In this section—

(a) “rescue financing” means any financing that satisfies either one or more of the following conditions:

(i) the financing is necessary for the survival of a company that obtains the financing or the whole or any part of its undertaking as a going concern;

(ii) the financing is necessary for the Court’s approval under subsection 366(4) or subsection 369C(5) of a compromise or arrangement referred to in subsection 366(1) or subsection 369C(1), as the case may be, involving a company that obtains the financing;

(iii) the financing is necessary to achieve a more advantageous realisation of the assets of a company that obtains the financing, than on a winding up of that company;

(b) “security interest” means any mortgage, charge, pledge, lien or other type of security interest recognized by law;

(c) “super priority debt” means a debt, arising from any rescue financing obtained or to be obtained by a company, that is to have priority, pursuant to an order under subsection (1), over all the preferential debts specified in paragraphs 527(1)(b) to (f) and all other unsecured debts, if the company is wound up.

**Restraint of disposition of property, etc., during the period of restraining order**

**368c.** (1) The Court may, on an application made by any creditor of a subject company or a related company at any time while a restraining order granted under section 368 or 368A is in force, grant one or more of the following orders:

- (a) an order restraining the disposal of property of the subject company or a related company other than in its ordinary course of business;
- (b) an order restraining the transfer of any shares of the subject company or the related company;
- (c) an order restraining the alteration of the rights of any member of the subject company or the related company.

(2) The period of an order granted under this section shall not exceed the expiry date of a restraining order granted under section 368 or 368A.

**Power of Court to cram down**

**368d.** (1) This section applies where—

- (a) a compromise or arrangement between a company and its creditors or any class of those creditors has been voted on at a relevant meeting;
- (b) the creditors meant to be bound by the compromise or arrangement are placed in two or more classes of creditors for the purpose of voting on the compromise or arrangement at the relevant meeting;
- (c) the conditions in subsection 366(3), in so far as they are applicable, are satisfied at the relevant meeting in respect of at least one class of creditors; and

(d) the conditions in subsection 366(3), in so far as they are applicable, are not satisfied at the relevant meeting in respect of at least one class of creditors, each called in this section a dissenting class.

(2) Notwithstanding subsections 366(1) and (3), the Court may, subject to this section and on the application of the company, or a creditor of the company who has obtained the leave of the Court to make an application under this subsection, approve the compromise or arrangement, and order that the company and all classes of creditors concerned shall be bound by the compromise or arrangement.

(3) The Court may make an order under subsection (2) if—

(a) a majority of seventy-five per centum of the total value of creditors or class of creditors or members or class of members who were meant to be bound by the compromise or arrangement, and who were present and voting either in person or by proxy at the relevant meeting, have agreed to the compromise or arrangement; and

(b) the Court is satisfied that the compromise or arrangement does not discriminate unfairly between two or more classes of creditors and is fair and equitable to each dissenting class.

(4) For the purposes of paragraph (3)(b), a compromise or arrangement is fair and equitable to a dissenting class if the following conditions are fulfilled:

(a) no creditor in the dissenting class receives, under the terms of the compromise or arrangement, an amount that is lower than the amount to be received by the creditor as estimated by the Court in the most likely scenario if the compromise or arrangement does not become binding on the company and all classes of creditors concerned meant to be bound by the compromise or arrangement; and

(b) either of the following applies:

(i) where the creditors in the dissenting class are secured creditors, the terms of the compromise or arrangement—

(A) shall provide for each creditor in the dissenting class to receive deferred cash payments totalling the amount of the creditor's claim that is secured by the security held by the creditor, and preserve that security and the extent of that claim, whether or not the property subject to that security is to be retained by the company or transferred to another entity under the terms of the compromise or arrangement;

(B) shall provide that where the security held by any creditor in the dissenting class to secure the creditor's claim is to be realised by the company free of encumbrances, the creditor has a charge over the proceeds of the realisation to satisfy the creditor's claim that is secured by that security; or

(C) shall provide that each creditor in the dissenting class is entitled to realise the indubitable value equivalent to the security held by the creditor in order to satisfy the creditor's claim that is secured by that security; or

(ii) where the creditors in the dissenting class are unsecured creditors, the terms of the compromise or arrangement—

(A) shall provide for each creditor in that class to receive property of a value equal to the amount of the creditor's claim; or

(B) shall not provide for any creditor with a claim that is subordinate to the claim of a creditor in the dissenting class, or any member, to receive or retain any property on account of the subordinate claim or the member's interest.

(5) The Court may require the insolvency practitioner appointed under subsection 367(3) to assist the Court in estimating the amount that a creditor is expected to receive in the most likely scenario if the compromise or arrangement does not become binding on the company and all class of creditors meant to be bound by the compromise or arrangement.

(6) In this section, "relevant meeting" means—

- (a) where the compromise or arrangement in question is subject to a revote under subsection 369A(1), the meeting held for that purposes; or
- (b) the meeting ordered by the Court under subsection 366(1) or, if that meeting is adjourned under subsection 366(2), the adjourned meeting."

### **New sections 369A, 369B, 369C and 369D**

**13.** The principal Act is amended by inserting after section 369 the following sections:

#### **"Power of Court to order revote**

**369A.** (1) At the hearing of an application for the Court's approval of a compromise or arrangement under subsection 366(4), the Court may order the company to hold another meeting of the creditors or class of creditors for the purpose of putting the compromise or arrangement to a revote subject to such terms as the Court thinks fit.

(2) An order made under subsection (1) may provide for one or more of the following matters:

- (a) the manner of summoning and convening the meeting;
- (b) the classification of any creditor for the purpose of voting at the further meeting;
- (c) the amount of any creditor's debt that is to be admitted for the purpose of voting at the further meeting;
- (d) the weight to be attached to the vote of any creditor at the further meeting.

(3) A meeting held pursuant to an order of the Court made under subsection (1) shall be chaired by a person who is—

- (a) an insolvency practitioner appointed under subsection 367(3); or
- (b) a person elected by the majority in value of the creditors or class of creditors or members or class of members, if no insolvency practitioner has been appointed under subsection 367(3).

### **Filing, inspection and adjudication of proof of debt**

**369B.** (1) Where the Court orders a meeting under subsection 366(1) to be summoned, the company shall state in every notice referred to in subsection 369(1) summoning the meeting—

- (a) the manner in which a creditor is to file a proof of debt with the company; and
- (b) the period within which the proof is to be filed.

(2) If a creditor does not file the creditor's proof of debt in the manner and within the period stated in the notice summoning the meeting, the creditor is not allowed to vote, whether in person or by proxy, at the meeting.

(3) Notwithstanding subsection (2), the Court may, on an application made by the company or a creditor, grant an order extending the period stated in the notice summoning the meeting within which a proof of debt is to be filed.

(4) Upon being granted an order under subsection (3), the company shall as soon as practicable, send a notice of the order to each creditor meant to be bound by the compromise or arrangement.

(5) Every proof of debt filed under this section is to be adjudicated by the chairperson of the meeting held under subsection 366(1).

(6) A creditor who has filed a proof of debt is entitled to inspect the whole or any part of a proof of debt filed by any other creditor, except a part of the other creditor's proof that contains information that is subject to any obligation as to secrecy, or to any other restriction upon the disclosure of information, imposed by any written law, contract or rule of professional conduct, or by any person or authority under any written law.

(7) The chairperson shall inform each creditor who has filed a proof of debt of the results of the adjudication of the proofs of debt filed by all creditors within such period and in such manner as may be determined by the Registrar.

(8) A creditor who has filed a proof of debt may object to one or more of the following matters:

- (a) the rejection by the chairperson of the whole or any part of the creditor's proof of debt;
- (b) the admission by the chairperson of the whole or any part of a proof of debt filed by another creditor;
- (c) a request by another creditor to inspect the whole or any part of the creditor's proof of debt.

(9) Any dispute between the chairperson and the company, between the chairperson and one or more creditors in relation to the rejection of a proof of debt, or between two or more creditors in relation to the inspection or admission of a proof of debt, may be adjudicated by an independent assessor appointed—

(a) by the agreement of all parties to the dispute; or

(b) if there is no such agreement, by the Court on the application of—

(i) any party to the dispute; or

(ii) the company, whether or not a party to the dispute.

(10) The independent assessor appointed under subsection (9) shall be entitled to receive a remuneration which shall be determined—

(a) by the agreement of all the parties to the dispute to be adjudicated by the independent assessor, where the independent assessor is appointed by the agreement of those parties; or

(b) by the Court, where the independent assessor is appointed by the Court.

(11) Where a creditor, the company or the chairperson disagrees with any decision of an independent assessor on an adjudication under subsection (9) in relation to the inspection, admission or rejection of a proof of debt, the creditor, company or chairperson, as the case may be, may file a notice of disagreement stating the reasons for the disagreement regarding that decision to the Court in the manner as determined by the Registrar not less than seven days before the hearing of the application under subsection 366(4).

(12) The person filing the notice of disagreement shall send a copy of the notice filed under subsection (11) to—

- (a) the company, unless the notice is filed by the company; and
- (b) any creditor who has filed a proof of debt with the company for the purpose of voting at the meeting held under subsection 366(1), upon the request of that creditor.

(13) In deciding whether or not an approval shall be granted under subsection 366(4), the Court shall take into account any notice of disagreement filed under subsection (11).

**Power of Court to approve compromise or arrangement without meeting of creditors**

**369c.** (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of those creditors, the Court may, on an application made by the company, grant an order approving the compromise or arrangement without any meeting of the creditors or class of creditors.

(2) If the proposed compromise or arrangement is approved by order of the Court under subsection (1), the approved compromise or arrangement is binding on the company and the creditors or class of creditors meant to be bound by the approved compromise or arrangement.

(3) The Court shall not approve a compromise or arrangement under subsection (1) unless—

- (a) the company has provided each creditor meant to be bound by the proposed compromise or arrangement with a statement that complies with subsection (6) and contains the following information:
  - (i) information concerning the company's property, assets, business activities, financial condition and prospects;

(ii) information on the manner in which the terms of the proposed compromise or arrangement will, if it takes effect, affect the rights of the creditor;

(iii) such other information as is necessary to enable the creditor to make an informed decision on the proposed compromise or arrangement;

(b) the company has published a notice of the application under subsection (1) in the manner as determined by the Registrar;

(c) the company has sent a notice and a copy of the application under subsection (1) to each creditor meant to be bound by the proposed compromise or arrangement; and

(d) the Court is satisfied that had a meeting of the creditors or class of creditors been summoned, the conditions in subsection 366(3) would have been satisfied.

(4) Notwithstanding paragraph (3)(c), the company may, if directed by the Court, give notice of the application under subsection (1) to the creditors or class of creditors in such manner as the Court may direct.

(5) The Court may grant its approval of a proposed compromise or arrangement subject to such alterations or conditions as the Court thinks just.

(6) The statement referred to in paragraph (3)(a) shall—

(a) explain the effect of the proposed compromise or arrangement and, in particular, state—

(i) any material interests of the directors of the company, whether as directors or members or creditors of the company or otherwise; and

(ii) the effect that the proposed compromise or arrangement has on those interests, in so far as that effect is different from the effect that the proposed compromise or arrangement has on the like interests of other persons; and

(b) where the proposed compromise or arrangement affects the rights of a debenture holder, contain the like explanation as required under paragraph (a) with respect to a trustee for the debenture holder.

(7) Each director of a company and each trustee for a debenture holder shall give notice to the company of such matters relating to the director or trustee for the debenture holder as may be necessary for the purposes of subsection (6) within seven days after the director or trustee for the debenture holder receives a request in writing from the company for information as to those matters.

(8) Any director of a company or trustee for a debenture holder who contravenes subsection (7) commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding twelve months or to both.

(9) A person, being a director of a company or a trustee for a debenture holder, shall not be liable under subsection (8) if the person shows that the person's contravention of subsection (7) was due to the refusal of another director of the company or trustee for a debenture holder to provide the person with the particulars of the person's material interests affected by the compromise or arrangement.

(10) Unless the Court orders otherwise, an order made under subsection (1)—

(a) has no effect until an office copy of the order is lodged with the Registrar; and

(b) upon being so lodged, the order shall take effect on and from the date of lodgement or such earlier date as the Court may determine and as may be specified in the order.

(11) Where the terms of any compromise or arrangement approved under this section provide for any money or other consideration to be held by or on behalf of any party to the compromise or arrangement in trust for any person, the person holding the money or other consideration shall after the expiration of two years but before the expiration of ten years, starting from the date the money or other consideration was received by the person, transfer the money or other consideration to the Official Receiver.

(12) The Official Receiver shall—

(a) deal with any moneys received under subsection (11) as if the moneys were paid to the Official Receiver under section 508; and

(b) sell or dispose of any other consideration received under subsection (11) in such manner as the Official Receiver thinks fit, and deal with the proceeds of the sale or disposal as if those proceeds were moneys paid to the Official Receiver under section 508.

**Power of Court to review act, omission or decision, etc., after approval, etc., of compromise or arrangement**

**369D.** (1) The Court may, on an application of any company or creditor bound by a compromise or arrangement which has been approved by the Court under subsection 366(4) or subsection 369c(1), clarify any terms of the compromise or arrangement.

(2) Where the Court is satisfied that the company has committed an act or omission, or made a decision, that results in a breach of any terms of the compromise or arrangement, the Court may, on an application of any creditor bound by the compromise or arrangement—

(a) confirm, reverse or modify the act, omission or decision of the company; or

(b) give such direction or make such order as the Court thinks fit to rectify the act, omission or decision of the company.

(3) No clarification or order made, and no direction given, by the Court under subsection (1) or (2) may alter or affect any person's rights under the terms of the compromise or arrangement.”.

### **Substitution of section 395**

**14.** The principal Act is amended by substituting for section 395 the following section:

#### **“Non-application of this Subdivision**

**395.** This Subdivision shall not apply to—

- (a) a company which is a licensed institution or an operator of a designated payment system regulated under the laws enforced by the Central Bank of Malaysia;
- (b) a company which is approved or registered under Part II, licensed or registered under Part III, approved under Part IIIA or recognized under Part VIII of the Capital Markets and Services Act 2007; and
- (c) a company which is approved under Part II of the Securities Industry (Central Depositories) Act 1991.”.

### **New section 398A**

**15.** The principal Act is amended by inserting after section 398 the following section:

#### **“Recovery of secured property during voluntary arrangement**

**398A.** (1) Notwithstanding section 398, a secured creditor may take possession of, exercise any other right in relation to, or otherwise recover, the secured property during a moratorium in a voluntary arrangement if—

- (a) the secured property is not required by the company for the voluntary arrangement;

(b) the moratorium poses a high risk to the existence of the secured property; or

(c) the value of the secured property decreases due to the moratorium.

(2) A secured creditor shall notify and obtain the consent from the nominee before taking possession of the secured property under subsection (1).

(3) For the purposes of this section, “secured property” means any property other than immovable property which is subject to a charge or any other security.”.

**Amendment of section 403**

**16.** Section 403 of the principal Act is amended—

(a) in paragraph (a), by deleting the word “and” at the end of the paragraph;

(b) by substituting for paragraph (b) the following paragraph:

“(b) a company which is approved or registered under Part II, licensed or registered under Part III, approved under Part IIIA or recognized under Part VIII of the Capital Markets and Services Act 2007; and”;

(c) by inserting after paragraph (b) the following paragraph:

“(c) a company which is approved under Part II of the Securities Industry (Central Depositories) Act 1991.”.

**Substitution of section 406**

17. Section 406 of the principal Act is amended—

(a) by substituting for subsection (1) the following subsection:

“(1) A judicial management order shall, unless it is otherwise discharged, remain in force for a period of six months from the date of the making of the order but the Court may, on application of a judicial manager, extend the period subject to such terms as the Court may impose.”; and

(b) in subsection (2), by substituting for the words “If an application to extend the period of another six months as referred to in subsection (1) is made” the words “If an application is made to extend the period of six months as referred to in subsection (1) to a longer period as the Court may allow”.

**Amendment of section 411**

18. Section 411 of the principal Act is amended by inserting after subsection (4) the following subsection:

“(5) Notwithstanding paragraph (4)(d), a secured creditor may, after giving notification to the judicial manager, enforce security over the company’s movable property or repossess any goods in the company’s possession under any hire purchase agreement, chattels leasing agreement or retention of title agreement while a judicial management order is still in force on any or all of the following conditions:

- (a) the judicial manager confirms that the goods or movable property is not required by the company which is under the judicial management order;
- (b) the judicial management order poses a high risk to the existence of the goods or movable property; or
- (c) the value of the goods or movable property decreases due to the judicial management order.”.

**New section 415A**

**19.** The principal Act is amended by inserting after section 415 the following section:

**“Super priority for rescue financing for judicial management**

**415A.** (1) Where a company is under a judicial management order, the Court may, on an application by the judicial manager of the company, grant one or more of the following orders:

- (a) an order that if the company is wound up, notwithstanding subsection 527(1), the debt arising from any rescue financing obtained by the company shall be paid immediately after the costs and expenses of the winding up of the company as referred to in paragraph 527(1)(a) are paid;
- (b) an order to secure a debt arising from any rescue financing which otherwise would not have been able to be obtained by the company unless the debt is secured by—
  - (i) a security interest on property of the company that is not subject to any security interest; or
  - (ii) a subordinate security interest on property of the company that is subject to an existing security interest; or
- (c) an order to secure a debt arising from any rescue financing to be obtained by the company by a security interest of the same priority as or a higher priority than an existing security interest on property of the company, if—
  - (i) the company would not have been able to obtain the rescue financing from any person unless the debt arising from the rescue financing is secured in the manner referred to in this paragraph; and

(ii) the interests of existing security interest holder are adequately protected.

(2) A judicial manager who makes an application under subsection (1) shall send a notice of the application to each creditor of the company.

(3) Any creditor of the company may oppose an application under subsection (1).

(4) The reversal or modification on appeal of an order under paragraph (1)(b) or (c) does not affect the validity of any debt so incurred, or any security interest that was granted pursuant to the order, or the priority of that security interest, if the debt arising from rescue financing intended to be secured by that security interest was provided in good faith, whether or not with knowledge of the appeal, unless the order was stayed pending the appeal before the rescue financing was provided.

(5) For the purposes of subparagraph (1)(c)(ii), the interests of an existing security interest holder is adequately protected if—

- (a) the Court orders the company to make one or more cash payments to the holder, the total amount of which is sufficient to compensate the holder for any decrease in the value of the holder's existing security interest that may result from the making of the order under paragraph (1)(c);
- (b) the Court orders the company to provide to the holder additional or replacement security of a value sufficient to compensate the holder for any decrease in the value of the holder's existing security interest that may result from the making of the order under paragraph (1)(c); or
- (c) the Court grants any relief, other than compensation, that will result in the realisation by the holder of the indubitable equivalent of the holder's existing security interest.

(6) Where a company that has two or more super priority debts is wound up, the super priority debts—

- (a) rank equally in priority among all of the super priority debts; and
- (b) are to be paid in full or, if the company has insufficient property to meet the debt, shall rank *pari passu* and shall be paid in equal proportion among all of the super priority debts.

(7) Sections 426 and 528 shall not affect any priority conferred, any security interest or relief granted, or any payment made, pursuant to and in accordance with an order granted under subsection (1).

(8) The judicial manager shall, within seven days after the date of an order granted under subsection (1), lodge an office copy of the order with the Registrar.

(9) In this section—

- (a) “rescue financing” means any financing that satisfies one or more of the following conditions:
  - (i) the financing is necessary for the survival of a company that obtains the financing, or the whole or any part of its undertaking as a going concern;
  - (ii) the financing is necessary for the Court’s approval under subsection 366(4) or subsection 369c(5) of a compromise or arrangement referred to in subsection 366(1) or subsection 369c(1), as the case may be, involving a company that obtains the financing;
  - (iii) the financing is necessary to achieve a more advantageous realisation of the assets of a company that obtains the financing, than on a winding up of that company;
- (b) “security interest” means any mortgage, charge, pledge, lien or other type of security interest recognized by law;

- (c) “super priority debt” means a debt, arising from any rescue financing obtained or to be obtained by a company, that is to have priority, pursuant to an order under subsection (1), over all the preferential debts specified in paragraphs 527(1)(b) to (f) and all other unsecured debts, if the company is wound up.”.

### **New Division 9**

**20.** The principal Act is amended by inserting after section 430 the following division:

#### “Division 9

#### *Protection for Essential Goods and Services*

#### **Protection for essential goods and services**

**430A.** (1) Subject to subsection (2), an insolvency related clause in any contract for the supply of essential goods and services shall not be exercised against any company.

(2) A supplier who wishes to exercise his rights pursuant to an insolvency related clause in a contract shall communicate his intention of preserving his rights under the insolvency related clause to the company in writing at least thirty days before exercising his rights pursuant to the insolvency related clause in accordance with the contract.

(3) This section shall not prevent a supplier from exercising his any other rights, including right to payment for essential goods and services provided to a company, under a contract for supply of essential goods and services.

(4) For the purposes of this section—

(a) “insolvency related clause” means a term of contract which—

(i) allows the automatic termination of a contract of essential goods and services or supply of essential goods and services, modification of rights between a supplier and a company under the contract merely because the company becomes subject to the proceedings in relation to a compromise or arrangement, a voluntary arrangement or a judicial management; or

(ii) allows a supplier to terminate a contract of essential goods and services or supply of essential goods and services, enforce any rights or vary any obligations under a contract merely because the company becomes subject to the proceedings in relation to a compromise or arrangement, a voluntary arrangement or a judicial management;

(b) “essential goods and services” means essential goods and services specified in the Ninth A Schedule.”.

### **Amendment of section 433**

**21.** Section 433 of the principal Act is amended by inserting after subsection (4c) the following subsections:

“(4D) Any person who has been approved as a liquidator under subsection 433(4) shall, within thirty days of the approval, notify the Registrar the following particulars:

(a) personal information of the approved liquidator;

(b) approval as an approved liquidator;

(c) the firm of the approved liquidators, including partners of the firm and branches, if any; and

(d) any other particulars required by the Registrar.

(4E) If there is any change to the particulars specified in subsection (4D), the liquidator shall update the information within fourteen days from the date of such change.”.

### **Amendment of section 536**

**22.** Paragraph 536(2)(a) of the principal Act is amended by substituting for the words “the presentation of the winding up petition against the company” the words “on the date of winding up order”.

### **Amendment of section 562**

**23.** Subsection 562(1) of the principal Act is amended—

(a) in paragraph (f), by deleting the word “and” at the end of the paragraph; and

(b) by inserting after paragraph (f) the following paragraph:

“(fa) beneficial ownership information as specified under subsection 60B(1); and”.

### **Amendment of section 567**

**24.** Subsection 567(1) of the principal Act is amended—

(a) in paragraph (f), by deleting the word “or” at the end of the paragraph; and

(b) by inserting after paragraph (f) the following paragraph:

“(fa) the status of whether the foreign company is private or public; or”.

**New section 573A**

**25.** The principal Act is amended by inserting after section 573 the following section:

**“Beneficial ownership of foreign company**

**573A.** Division 8A of Part II shall apply to a foreign company subject to the following modifications:

(a) a reference to a “company” shall be taken as a reference to a “foreign company”; and

(b) a reference to an “officer” shall be taken as a reference to an “agent of a foreign company”.”.

**Amendment of section 576**

**26.** Subsection 576(2) of the principal Act is amended—

(a) in paragraph (h), by deleting the word “and” at the end of the paragraph; and

(b) by inserting after paragraph (h) the following paragraphs:

“(ha) the beneficial ownership information as specified under subsection 60B(1);

(hb) the address at which its register of beneficial owners the company required to be kept pursuant to subsection 60B(2), if not kept at its registered office; and”.

**Amendment of section 582**

**27.** Paragraph 582(3)(c) of the principal Act is amended in the national language text by substituting for the words “akuan ketidaksolvenan” the words “pengisytiharan kesolvenan”.

**New section 612A**

**28.** The principal Act is amended by inserting after section 612 the following section:

**“Publication or advertisement on website**

**612A.** Where any information is required to be published or advertised in a newspaper under this Act, any person may, in lieu of publishing or advertising the information in a newspaper, publish or advertise the information on the website of the Commission in the form and manner as the Registrar may determine upon payment of the prescribed fee.”.

**Amendment of section 613**

**29.** Subsection 613(1) of the principal Act is amended—

(a) by inserting after paragraph (a) the following paragraph:

“(aa) any person or class of persons who may access the register of beneficial owners of the company or the beneficial ownership information, the manner and the terms and conditions for accessing such register;”;

and

(b) by inserting after paragraph (b) the following paragraph:

“(ba) any matters relating to a compromise or arrangement, corporate voluntary arrangement, judicial management, liquidation and receivership;”.

**New Schedule**

**30.** The principal Act is amended by inserting after the Ninth Schedule the following schedule:

“NINTH A SCHEDULE

[Subsection 430A(4)]

TYPES OF ESSENTIAL GOODS AND SERVICES

1. Supply of water
2. Supply of electricity
3. Supply of gas
4. Point of sales terminals
5. Computer software and hardware
6. Information, advice and technical assistance in connection with the use of information technology
7. Data storage and processing
8. Website hosting”.

**Saving**

**31.** Any investigation, trial, proceedings or action pending before the date of coming into operation of this Act shall, on the date of coming into operation of this Act, be continued in accordance with the provisions of the principal Act as if the principal Act had not been amended by this Act.